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SERVICE DATE - LATE RELEASE JULY 18, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-468 (Sub-No. 5X)

PADUCAH & LOUISVILLE RAILWAY, INC.—ABANDONMENT EXEMPTION— IN McCRACKEN COUNTY, KY

Decided: July 18, 2003

By decision and notice of interim trail use or abandonment, served on June 20, 2003 (June 2003 decision), the Paducah & Louisville Railway, Inc. (P&L), was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 5,780 feet of rail line extending from station number 17+55, near Caldwell Street, to station number 64+00, near 6th Street, on each side of railroad milepost 1, in the city of Paducah, McCracken County, KY (the line), subject to trail use, public use, historic preservation, environmental, and standard employee protective conditions. The exemption is scheduled to become effective on July 20, 2003.

On July 7, 2003, Boral Bricks, Inc. (Boral), timely filed a petition to stay the effective date of the exemption, pending disposition of its petition to reopen.¹ On July 14, 2003, P&L filed a reply.

DISCUSSION AND CONCLUSIONS

Abandonment determinations involve an assessment of whether the public convenience and necessity requires a carrier to continue providing service against its will. By their nature, these determinations involve a balancing of the interests of the shippers on the line with those of the carrier providing service. Boral argues that the June 2003 decision did not pay enough attention to the adverse effects that abandonment would have on its interests. In fact, the decision recognized that abandonment would adversely affect Boral, but found the disadvantage to Boral to be outweighed by the hardship to P&L of providing service over the line at what its witness testified was a loss.

Boral has argued about the merits in its petition for reopening, and P&L will presumably respond in some detail in support of abandonment. At this point, however, the principal issue is whether a stay is appropriate in light of a balancing of the harms that could result between now and the

¹ Boral filed its petition to reopen on July 15, 2003. The Board will address the merits of the petition to reopen in a subsequent decision.

time that Boral's petition to reopen is considered and resolved. Here, Boral may have to pay more for its transportation service if it must switch from rail to truck. But, if a stay is granted, the carrier will have to continue to absorb operating losses and to assume risk for maintaining property that, according to P&L's witness, is in poor condition. Given the limited amount of time before Boral's petition for reopening will be considered, Boral has not justified a stay pending administrative review. Accordingly, its petition for stay will be denied.²

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Boral's petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Roger Nober, Chairman.

Vernon A. Williams
Secretary

² In denying the petition for stay, the Board's ability to give meaningful and thorough consideration to all issues raised in Boral's petition to reopen is not undermined. The Board could reopen the decision and deny P&L's abandonment exemption; therefore, if P&L proceeds to consummate the abandonment before the petition to reopen is considered, it does so at its own risk. See Busboom Grain Co. v. I.C.C., 830 F.2d 74, 76 (7th Cir. 1987).